

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos. **09-O-17073-LMA (09-O-16454;**
) **09-O-18120; 09-O-18166;**
TANMAY PRAMOD MISTRY,) **10-O-00146; 10-O-04542;**
) **10-O-00313; 10-O-02540;**
Member No. 251425,) **10-O-04152)**
)
A Member of the State Bar.)
) **DECISION INCLUDING DISBARMENT**
) **RECOMMENDATION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**

I. Introduction

In this contested disciplinary proceeding, respondent **Tanmay Pramod Mistry** was charged with 13 counts of professional misconduct for violating Business and Professions Code sections¹ 6068, subdivision (m) (one count) and 6106 (two counts) and Rules of Professional Conduct, rules 1-300(A), 1-310 and 3-110(A) (one count each) and 3-700(D)(2) (seven counts). The court finds, by clear and convincing evidence, that respondent is culpable of all 13 counts.

In view of respondent's serious misconduct and the aggravating and mitigating factors, the court recommends that respondent be disbarred from the practice of law and that he be ordered to make restitution as set forth below.

¹ Future references to section are to the Business and Professions Code unless otherwise stated.

Deputy Trial Counsel Jessica A. Lienau and Kevin B. Taylor represented the State Bar. Phillip Feldman served as co-counsel with respondent.

II. Findings of Fact and Conclusions of Law

The findings of fact are based on the record and the evidence adduced at trial. After carefully observing and considering respondent's testimony, including, among other things, his demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified; and after carefully reflecting on the record as a whole, the court finds that much of respondent's testimony lacked credibility and sincerity. (Evid. Code, § 780.) Other times, respondent's testimony appeared contrived. For example, when he (1) stated in his response to the Notice of Disciplinary Charges' paragraph five that he told the State Bar about Safehaven using his name without permission on September 17, 2009, two days before the State Bar investigators met with him, but, in reality, it was on the same day the State Bar investigators called him; (2) testified that he was just "of counsel" or "in-house" counsel or just an employee of Safehaven. In reality, he was in a business relationship with Safehaven. He mailed qualified written request (QWR) letters and met with clients. He was not just "of counsel"; (3) testified that the sheriffs and the State Bar investigators were intimidating and forceful, the recorded interview shows otherwise; (4) testified that he did not know of the fictitious grant deeds and bankruptcy filings; (5) did not give his retainer agreement to Safehaven to sign up clients; and (6) told Safehaven to refund monies when clients requested a refund of their fees.

The State Bar's witnesses were credible and reliable.

Respondent was admitted to the practice of law in California on December 3, 2007, and has been a member of the State Bar of California since that time.

A. Findings of Fact

In late 2008 and up to and including September 2009, respondent was affiliated with a loan modification business known variously as Safehaven, Protection Familiar Plus, Your Dreams Come True Investments and Home Loan Negotiators (hereinafter collectively, Safehaven). Safehaven was owned and operated by persons not licensed to practice law in California.

On September 17, 2009, law enforcement was called to Safehaven offices in Pico Rivera, California, following reports of a group of angry Safehaven clients gathering outside.

These clients were reporting that Safehaven took fees for loan modifications and then did nothing for them. Because it appeared that Safehaven was operating under respondent's name, law enforcement contacted the State Bar.

Respondent was contacted by police detective Timothy Williams the same day, September 17, 2009. Respondent denied knowing about the loan modification operation Safehaven or having a business relationship with Safehaven, and informed the detective he was the victim of identity theft. He stated that he had never accepted any money from Safehaven and he denied representing any of the loan modification clients. Thereafter, law enforcement sought and obtained a search warrant for the Safehaven premises to investigate possible fraud, including bankruptcy fraud.

Also on September 17, 2009, State Bar investigator John Noonan spoke with respondent. Respondent reiterated what he told Detective Williams, that he was the victim of identity theft and that Safehaven had no authorization to use his name. Later in the conversation, however, respondent did admit to some involvement with non-attorney principals at Safehaven and that he had met one of the officers of Safehaven, Alex Jurado in December 2008. He stated he had taken

only three or four referrals from Safehaven and that he would go to their office about once a week, but never authorized Safehaven to use his name.

In addition, on September 17, 2009, respondent faxed a letter to the State Bar stating Safehaven was using his name without his "permission, consent, or authority."

Law enforcement searched Safehaven on September 18, 2009. State Bar investigators accompanied them to acquire information on attorney involvement, among other things.

During the search, client files and other documents were discovered containing respondent's name. In addition, a Safehaven check made out to respondent in the amount of \$4,000 was located.

On September 18, 2009, State Bar investigators visited respondent in his office in San Dimas, California. During their conversation, respondent admitted that he authorized Safehaven to use his name as an attorney and to use his signature.

Respondent had a business agreement with Safehaven to receive \$4,000 a month in exchange for authorizing Safehaven to use his name as an attorney and his law license, letterhead, signature and retainer agreements, as well as representing loan modification clients.

Respondent agreed to represent clients and to mail a QWR form letter to the lender on behalf of each client. The QWR letters appear on respondent's letterhead and the first sentence reads "this office has been retained by the borrower [the name of the individual loan modification client]." On the second to the last page of the QWR, the letter warns the lender that the lender's failure to respond to the QWR could result in the termination of the lender's property interest in the client's subject property. The QWR letter makes anyone reading it believe that respondent is acting as the attorney for the client, not for Safehaven.

Respondent provided his retainer agreement to Safehaven for its use in signing up new loan modification clients. Respondent's retainer agreements had a letterhead identifying himself

as "Attorney at Law" and the agreements stated, among other things, that respondent "is retained to represent ... client[,]" that "client agrees to pay attorney for its legal services[,]" and that respondent "shall bill its fee for time expended on this case at the rate of \$350 per hour or the work of all partners and Associates [sic], and \$150 per hour for clerks, until this retainer is exhausted."

All of the clients paid Safehaven directly, about \$3,000 in fees for loan modification services.

During the September 18, 2009, interview with the State Bar, respondent provided a written list of 549 clients obtained through Safehaven. Respondent informed law enforcement that he wished to rescind the identity theft he claimed against Safehaven.

On September 23, 2009, respondent, on the advice of his co-counsel, mailed a letter to the clients obtained through Safehaven in which he withdrew from representation, citing a conflict of interest caused by the State Bar's investigation.

Safehaven Fraudulent Practices

In 2009, Safehaven had a practice of filing fraudulent grant deeds granting a 5% interest in the loan modification client's property to one or more fictitious individuals. Safehaven also filed bankruptcies on behalf of loan modification clients sometimes without their permission or consent. In some instances, Safehaven used the fraudulent grant deeds to further bankruptcy fraud. Safehaven also had a practice of charging clients to prepare bankruptcy petitions and then filing the petitions in pro per without disclosing to the bankruptcy court the fees paid to Safehaven for the preparation of the petition.

Respondent knew about the fraudulent fraud deeds prepared by Safehaven, about the bankruptcy filings without the client's permission or consent, and about non-disclosure to the bankruptcy court regarding the fees paid to Safehaven for preparation of the petition, but he did

nothing about it. At no time did respondent report the fraud, inform clients of the fraudulent practices or take any steps to remove himself from his relationship with Safehaven due to the fraud.

Thomas and Olga Politz hired Safehaven for a loan modification. In April 2009, Thomas Politz met with respondent, who told him everything was fine and that respondent was stepping into the case. When he met with respondent again in July 2009, respondent again reassured him that he was taking care of things and that everything was going to be fine.

On July 7, 2009, a grant deed was recorded on the Politz property. It reflected a 5% ownership of the Politz property to Fabian Nava, Pedro Cortejo and Patty Rocha. The grant deed bore the signatures of both Thomas and Olga Politz and was notarized by Oswaldo Flores.

The Politzes first learned of the grant deed when they attempted to sell their property. Neither Thomas nor Olga Politz knew Fabian Nava, Pedro Cortejo or any Rocha. Neither Thomas nor Olga Politz signed the grant deed in front of a notary, as the document stated. Neither Thomas nor Olga Politz received any consideration in exchange for the 5% interest to the named persons, as the document stated.

The grant deed dated July 7, 2009, and recorded against the property was prepared and filed without the knowledge or consent of Thomas or Olga Politz. It was fraudulent.

In May 2009, Ana and Mario Martinez hired Safehaven and respondent to do a loan modification.

In June 2009, respondent made written representations to third parties that he was representing Mario Martinez.

On August 3, 2009, Safehaven filed a bankruptcy petition on behalf of Ana and Mario Martinez without their permission or consent. Respondent knew of the filing of the bankruptcy petition.

Safehaven maintained complete control over acceptance, or non-acceptance of a client, of evaluating whether a client was appropriate for a loan modification, of setting a fee, and acceptance or non-acceptance of a client for the purpose of filing a bankruptcy.

By maintaining complete control over the prospective and actual clients, Safehaven was engaged in the unauthorized practice of law. By agreeing to a professional arrangement whereby Safehaven would be in complete control of the prospective and actual clients until their matters were actually assigned to him, respondent aided a person or entity in the unauthorized practice of law.

The Del Hoyo Matter

On May 16, 2009, Eva and Jorge Del Hoyo hired respondent, through Safehaven, to represent them in a loan modification of their home loan. They paid Safehaven a total of \$2,995 and were signed up as respondent's clients. They received documents during the course of respondent's representation which bore respondent's letterhead: "Law Office of Tanmay P. Mistry."

Thereafter respondent did not contact the Del Hoyos' lender, CitiMortgage. On June 19, 2009, CitiMortgage wrote to the Del Hoyos, indicating that it had heard nothing from them despite a letter and several phone calls to the address and phone number it had for them on file. It also informed them that foreclosure proceedings would continue.

On September 2, 2009, Mrs. Del Hoyo contacted respondent and requested a full refund. Although respondent spoke to her and promised a refund, they have not received it.

On September 19, 2009, the Del Hoyos wrote to respondent and again requested a full refund but they have not received a refund of their fees.

The Martinez, Preciado, Leiva, Contreras, Cortez and Blozstein Matters

Roberto Martinez, Luis Preciado, Claudia Leiva, Jose Contreras, Rodimiro and Rosalinda Cortez and Paula Blozstein are all Spanish-speaking clients who all had similar experiences with Safehaven and respondent. Each one believed they were hiring an attorney when they hired Safehaven. Each one signed a retainer agreement on respondent's letterhead. Each one pre-paid Safehaven money for loan modification services. Each one received correspondence regarding their loan modification matter on respondent's letterhead, some were purportedly signed by respondent. Except for Blozstein, none of them ever met respondent.

None of them ever received a loan modification through Safehaven or respondent. None was ever provided an accounting of the fees paid. None of them ever received a refund of their fees paid. Respondent did not earn any of the fees they paid him because none of them received anything of value from his services.

MARTINEZ MATTER

In March 2009, Roberto Martinez hired respondent through Safehaven, and paid \$2,795 for respondent to "Negotiate Forbearance Agreement/Legal Couns." including loan modification work with respect to Martinez's home loan. Safehaven, acting as respondent's agent, provided a retainer agreement on letterhead stating "Home Loan Negotiators, Inc., Tanmay P. Mistry, Attorney at Law." Among other things, the agreement stated that: respondent was Martinez's attorney; Martinez agreed to pay respondent \$2,795 for "legal services"; the legal services might be performed by any of respondent's lawyers who respondent may associate; and respondent's fees (and that of "all partners and Associates") would be billed at \$350 per hour and the work of clerks would be billed at \$150 per hour.

On April 1 and May 2, 2009, Martinez received letters on respondent's letterhead in which respondent purported to provide a status update of Martinez's loan modification.

On September 23, 2009, respondent sent Martinez a letter on his letterhead, stating, among other things, that he was withdrawing immediately due to a State Bar investigation which created "an irremedial [sic] conflict of interest." Respondent further instructed Martinez not to telephone his office as the conflict of interest "makes it impossible for me to have any communication with you."

Respondent did not earn any of the fees Martinez paid him because his client got nothing of value from his services. At no time did respondent refund promptly any part of the advanced, unearned fee in the Martinez matter nor did he provide an accounting of any fees earned.

PRECIADO MATTER

In February 2009, Luis Preciado employed respondent, through Safehaven, for loan modification services or "Negotiate Forbearance Agreement/Loan Modification." Preciado paid \$2,795 for legal services. Safehaven, acting as respondent's agent, provided a retainer agreement on letterhead stating "Home Loan Negotiators, Inc., Tanmay P. Mistry, Attorney at Law." Among other things, the agreement stated that: respondent was Preciado's attorney; Preciado agreed to pay respondent \$2,795 for 'legal services'; the legal services might be performed by any of respondent's lawyers who respondent may associate; and respondent's fees (and that of "all partners and Associates") would be billed at \$350 per hour and the work of clerks would be billed at \$150 per hour.

On May 11, 2009, Preciado received a letter on respondent's letterhead in which respondent purports to provide a status update on Preciado's loan modification.

On September 23, 2009, respondent sent Preciado a letter on his letterhead, stating, among other things, that he was withdrawing immediately due to a State Bar investigation which created "an irremedial [sic] conflict of interest." Respondent instructed Preciado not to telephone

his office as the conflict of interest "makes it impossible for me to have any communication with you."

Respondent did not earn any of the fees Preciado paid him because his client got nothing of value from his services. At no time did respondent refund promptly any part of the advanced, unearned fee in the Preciado matter nor did he provide an accounting of any fees earned.

LEIVA MATTER

In May 2009, Claudia Leiva employed respondent, through Safehaven, for loan modification services, or "Negotiate Forbearance Agreement/Loan Modification." Leiva paid \$1,300 toward legal services. Safehaven, acting as respondent's agent, provided a retainer agreement on letterhead stating "Home Loan Negotiators, Inc., Tanmay P. Mistry, Attorney at Law." Among other things, the agreement stated that: respondent was Leiva's attorney; Leiva agreed to pay respondent \$2,795 for "legal services"; the legal services might be performed by any of respondent's lawyers who respondent may associate; and respondent's fees (and that of "all partners and Associates") would be billed at \$350 per hour and the work of clerks would be billed at \$150 per hour.

On September 23, 2009, respondent sent Leiva a letter on his letterhead, stating, among other things, that he was withdrawing immediately due to a State Bar investigation which created "an irremedial [sic] conflict of interest." Respondent instructed Leiva not to telephone his office as the conflict of interest "makes it impossible for me to have any communication with you."

Respondent did not earn any of the fees Leiva paid him because his client got nothing of value from his services. At no time did respondent refund promptly any part of the advanced, unearned fee in the Leiva matter nor did he provide an accounting of any fees earned.

CONTRERAS MATTER

In July 2009, Jose Contreras employed respondent, through Safehaven, for loan modification services. Safehaven provided a retainer agreement on the letterhead of "Home Loan Negotiators, Inc., Tanmay P. Mistry Attorney at Law."

Among other things, the agreement stated: respondent was Contreras' attorney; Contreras agreed to pay respondent \$2,995 for "legal services"; the legal services might be performed by any of respondent's lawyers who respondent may associate; and respondent's fees (and that of "all partners and Associates") would be billed at \$350 per hour and the work of clerks would be billed at \$150 per hour. Contreras paid \$700 toward legal services.

On September 23, 2009, prior to completing the loan modification process, respondent sent Contreras a letter in which he stated, among other things, that he was withdrawing immediately due to a State Bar investigation which created "an irremedial [sic] conflict of interest." Respondent instructed Contreras to not telephone his office as the conflict of interest "makes it impossible for me to have any communication with you."

Respondent did not earn any of the fees Contreras paid him because his client got nothing of value from his services. At no time did respondent refund promptly any part of the advanced, unearned fee in the Contreras matter nor did he provide an accounting of any fees earned.

THE CORTEZ MATTER

In April 2009, Rodimiro and Tedula Rosalinda Cortez employed respondent, through Safehaven, for loan modification services related to real property in Escondido, California. Safehaven provided a retainer agreement on letterhead of "Home Loan Negotiators, Inc., Tanmay P. Mistry Attorney at Law." Among other things, the agreement stated: respondent was Cortez's attorney; Cortez agreed to pay respondent \$2,995 for "legal services"; the legal services might be performed by any of respondent's lawyers who respondent may associate; and

respondent's fees (and that of "all partners and Associates") would be billed at \$350 per hour and the work of clerks would be billed at \$150 per hour.

The Cortezes paid \$2,995 for the loan modification services.

On September 23, 2009, prior to completing the loan modification process, respondent sent the Cortezes a letter on his letterhead, stating, among other things, that he was withdrawing immediately due to a State Bar investigation which created "an irremedial [sic] conflict of interest." Respondent instructed the Cortezes not to telephone his office as the conflict of interest "makes it impossible for me to have any communication with you."

Respondent did not earn any of the fees the Cortezes paid him because his client got nothing of value from his services. At no time did respondent refund promptly any part of the advanced, unearned fee in the Cortezes matter nor did he provide an accounting of any fees earned.

BLOZSTEIN MATTER

In February 2009, Paula Blozstein employed respondent through his agent, Safehaven, for loan modification services related to real property in Newhall, California. Safehaven provided a retainer agreement on letterhead of "Home Loan Negotiators, Inc., Tanmay P. Mistry Attorney at Law." Among other things, the agreement stated: respondent was Blozstein's attorney; Blozstein agreed to pay respondent \$2,795 for "legal services"; the legal services might be performed by any of respondent's lawyers who the respondent may associate; and respondent's fees (and that of "all partners and Associates") would be billed at \$350 per hour and the work of clerks would be billed at \$150 per hour.

Blozstein paid \$2,795 for the loan modification services.

Sometime between May 2009 and September 2009, respondent met with Blozstein and assured her that he was working on her case.

On September 23, 2009, prior to completing the loan modification process, respondent sent Blozstein a letter on his letterhead, stating, among other things, he was withdrawing immediately due to a State Bar investigation which created "an irremedial conflict of interest." Respondent instructed Blozstein not to telephone his office as the conflict of interest "makes it impossible for me to have any communication with you."

Respondent did not earn any of the fees Blozstein paid him because his client got nothing of value from his services. At no time did respondent refund promptly any part of the advanced, unearned fee in the Blozstein matter nor did he provide an accounting of any fees earned.

The Rudy Duarte Matter

In February 2009 Rudy Duarte employed Safehaven to handle a loan modification of his home mortgage in Cudahy, California, and for possibly filing a Chapter 13 bankruptcy. Duarte paid Safehaven about \$4,500 total for this work.

On March 20, 2009, respondent was asked by Safehaven to sign an authorization form. The authorization was on respondent's letterhead and indicated that Duarte had retained respondent and his staff.

In April 2009, Safehaven asked Duarte to execute a grant deed that transferred 5% interest in his property to three fictitious individuals Duarte did not know. Neither Safehaven nor respondent told Duarte that the grant deed he signed was fraudulent. Duarte did not know that signing the grant deed was wrong.

Among other things, this grant deed was for purposes of slowing down any sale of property by fraudulently placing any or all of the three individuals named on the grant deed into bankruptcy, resulting in at least a temporary stay of foreclosure. Respondent was aware of this scheme, but never informed Duarte of the reasons why he was being asked to sign a grant deed,

that Duarte may be participating in an illegal act or that it could have potential ramifications on the title of his real property.

Although Duarte never personally met respondent, on May 1, 2009, Duarte received a letter with respondent's letterhead where respondent purportedly assures him that he is diligently working on the case.

B. Conclusions of Law

1. Counts One and Two – (Bus. & Prof. Code, Section 6106 – [Moral Turpitude])

Section 6106 of the Business and Professions Code² makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by misrepresenting to law enforcement and to the State Bar that he had no relationship with Safehaven and had no clients through Safehaven; that Safehaven had no authority to use his name; and that he wished to file a report of stolen identity. Moreover, respondent also violated section 6106 by lending his name and title as an attorney to Safehaven; by maintaining his affiliation with Safehaven; and by taking no action to stop or report the fraudulent grant deeds despite knowing of Safehaven's fraudulent grant deeds and/or bankruptcy fraud.³ Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

² Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

³ The court does not find credible respondent's testimony that he did not know of the fraudulent grant deeds and bankruptcy fraud. Further, the court rejects respondent's argument that he had no duty to be candid with investigators because he was not under oath.

2. Count Three – (Rules of Professional Conduct, rule 1-310 [Forming a Partnership with a Non-Lawyer])

By entering into an agreement with Safehaven where, in exchange for \$4000 per month, respondent would provide his name as attorney to Safehaven including the use of his retainer agreements, respondent formed a partnership with a non-lawyer where at least one of the activities of that partnership consisted of the practice of law in wilful violation of rule 1-310 of the Rules of Professional Conduct.⁴ Respondent's testimony that he did not give Safehaven his retainer agreements so that Safehaven would sign up clients for him is not credible.

3. Count Four – (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

Rule 1-300(A) prohibits attorneys from aiding any person or entity in the unauthorized practice of law.

Respondent aided Safehaven's unauthorized practice of law by providing it with letterhead, retainer agreements and other documents to use as well as respondent's signature stamp. He also aided in the unauthorized practice of law by telling clients that he would "take care of it" and that he was their attorney, thereby confirming Safehaven's representations to the clients.

By agreeing to a professional arrangement whereby Safehaven would be maintaining complete control over prospective and actual clients, respondent aided a person or entity in the unauthorized practice of law.

4. Count Five – (Rule 3-110(A) [Failure to Perform with Competence])

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

⁴ Unless otherwise indicated, all further references to rule are to the Rules of Professional Conduct.

Respondent did not do anything for the del Hoyos. By not responding to CitiMortgage thereby resulting in the lender closing the del Hoyos' file, respondent intentionally, recklessly, or repeatedly did not perform legal services competently in wilful violation of rule 3-110(A).

5. Counts Six, Seven, Eight, Nine, Eleven, Twelve and Thirteen – (Rule 3-700(D)(2) [Failure to Refund Unearned Fees])

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

Respondent did not earn any of the fees the del Hoyos, Martinez, Preciado, Leiva, Contreras, the Cortezes and Blozstein paid him because they got nothing of value from his services. By not returning the fees that he was paid by these clients after his services were terminated, respondent did not return advanced, unearned fee in wilful violation of rule 3-700(D)(2).

6. Count 10 – (Section 6068, subd. (m) [Failure to Inform Client of Significant Development])

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing Duarte of the ramifications of signing a grant deed or of the reasons why he was being asked to sign, respondent did not keep Duarte reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in wilful violation of section 6068, subdivision (m).

IV. Aggravation and Mitigation

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standards 1.2(b) and (e).)⁵

A. Aggravation

There are several aggravating factors.

1. *Multiple Acts*

Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

2. *Harm to Clients/Public/Administration of Justice*

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Standard 1.2(b)(iv).) These vulnerable clients were desperate to keep their homes and respondent took advantage of their misfortune. Most of them were Spanish-speaking immigrants and not very sophisticated. They thought they were hiring an attorney when they gave their money to Safehaven to obtain loan modifications. Moreover, the fraudulent grant deeds and bankruptcy filings adversely impacted the public and the legal system and also exposed innocent clients like Duarte to criminal and civil liability.

3. *Indifference Toward Rectification/Atonement*

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).) Respondent has demonstrated no remorse and does not accept responsibility for his actions. He still contends that he did not even know some of these clients existed, despite evidence to the contrary. He calls his victims perpetrators who knowingly participated in the grant deed and bankruptcy fraud. This is not credible. His victims were just signing anything put in front of them because they wanted to

⁵All further references to standards are to this source.

save their homes. Further, respondent still argues that that he had no duty to be honest with investigators because he was not under oath. He avers that he did not have agreements with the clients because he never signed the fee agreements. He contends that his victims were not his clients because he never personally received funds from them, did not sign the fee agreements and did not meet most of them. He argues that there is nothing for him to refund or account for since he did not personally ever receive the clients' funds. All of these contentions are rejected by the court. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

B. Mitigation

1. No Prior Disciplinary Record

The absence of a prior record of discipline over many years of practice prior to the commencement of the misconduct is a mitigating factor. (Standard 1.2(e)(i).) Respondent was admitted to the practice of law in California in December 2007. He met and formed the agreement with Safehaven in December 2008. Accordingly, no mitigating weight is afforded to respondent's one year of discipline-free practice.

2. Extreme Emotional or Physical Difficulties

Extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the misconduct may be mitigating factors. (Std. 1.2(e)(iv).) Little mitigating weight is afforded to respondent's substance abuse and mental health issues. He testified that he was smoking three bowls of marijuana a day, did cocaine and was a heavy drinker and that he also suffered from anxiety and depression. He has only been sober for five months and has not established that he has recovered sufficiently from the mental health issues.

3. Good Character Witnesses

An extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct is a mitigating factor. (Std. 1.2(e)(vi).) Little weight is afforded to the testimony of respondent's good character witnesses because they did not know him well (two for less than one year).

Samuel Lovely has been an attorney for six years. He met respondent three years ago. Respondent leases office space from him. He has hired respondent to do contract work for him in the past. He does not know respondent that well, but is aware of the charges. He believes respondent to be of good character and honest.

Deborah Gutierrez has been an attorney for five years. She claims to know him well although she has known him for less than one year. She has hired respondent to do contract work for her in the past and are now partners in a legal corporation. She is aware of the charges and finds him to be of good character.

Gordon Flint Dickson has been an attorney for over 20 years. He has known respondent for less than one year but is now in a legal partnership with him along with Deborah Gutierrez. He is aware of the misconduct and believes respondent is of good moral character. He also feels that respondent should be disciplined in some way.

Ginger Marcos has been an attorney for five years. She has known respondent for eight years starting when they were in law school. She is aware of the charges and finds respondent to be extremely honest and of good character.

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.3, 2.4(b), 2.6 and 2.10 apply in this matter. The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

Although discipline is progressive, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable, in eight client matters, of violations of section 6068, subdivision (m), and 6106 and rules 1-300(A), 1-310, 3-110(A) and 3-700(D)(2). In

aggravation, the court considered, respondent's multiple acts of misconduct, harm to clients and to the administration of justice and indifference toward rectification or atonement. Little mitigating weight was afforded to his substance abuse and mental health issues or to his character witnesses.

The State Bar recommends disbarment. The court agrees.

The court found instructive *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. In *Jones*, the attorney was relatively inexperienced and had been admitted about two years when his misconduct began. Respondent Jones was a full-time associate at a law firm. At the same time and for a two-year period, he entered into an agreement with a nonlawyer to establish a law corporation and to split fees. The nonlawyer handled all aspects of the personal injury practice without appropriate supervision. The nonlawyer used illegal means to solicit clients and, without respondent's knowledge, practiced law, collected over \$600,000 in attorney fees although no attorney had performed services and misused nearly \$60,000 in settlement funds withheld to pay medical providers, all in respondent's name. Respondent did not take realistic action to stop these practices even after receiving reliable information that they were occurring. Respondent eventually reported the nonlawyer to the police, turned himself in to the State Bar and cooperated fully in the prosecution of his discipline case as well as the criminal case against the nonlawyer. Mitigating factors include substantial, spontaneous candor and cooperation, good character, community activities and paying \$57,000 from his own funds to lienholders unpaid by the nonlawyer.

The Review Department suspended the attorney for three years, stayed, placed him on a three-year probation and actually suspended him for two years and until he complied with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, for abdicating "basic professional responsibilities and allow[ing] a non-lawyer almost free rein to perform such

responsibilities in the lawyer's name." (*Id.* at p. 415.) *Jones* is distinguishable from the present case by the significant mitigation offered by respondent Jones, notably, his substantial, spontaneous candor and cooperation and restitution.

In the present case, respondent sold his law license and, in so doing, caused significant harm to vulnerable, desperate clients, the public and the administration of justice. And he still does not understand that he did that. The serious nature of the misconduct as well as the self-interest underlying respondent's actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

V. Recommendations

The court recommends that respondent **Tanmay Pramod Mistry** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

A. Restitution

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Eva and Jorge del Hoyo in the amount of \$2,995 plus 10% interest per annum from May 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Eva and Jorge del Hoyo, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

2. to Roberto Martinez in the amount of \$2,795 plus 10% interest per annum from March 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Roberto Martinez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Luis Preciado in the amount of \$2,795 plus 10% interest per annum from February 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Luis Preciado, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
4. to Claudia Leiva in the amount of \$1,300 plus 10% interest per annum from May 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Claudia Leiva, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
5. to Jose Contreras in the amount of \$700 plus 10% interest per annum from July 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Jose Contreras, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
6. to Rodimiro and Tedula Rosalinda Cortez in the amount of \$2,995 plus 10% interest per annum from April 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Rodimiro and Tedula Rosalinda Cortez, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
7. to Paula Blosztein in the amount of \$2,795 plus 10% interest per annum from February 15, 2009 (or to the Client Security Fund to the extent of any payment

from the fund to Paula Blosztein, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

B. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

C. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment will become effective three days from the date of service of this order and will terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court.

Dated: September ____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court